IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.585 OF 2004

Bharti Cellular Ltd.,
through its Manager (Legal)
Mr. Abhay D. Joglekar, having its Branch
Office at Kamat Towers, 6th Floor,
behind KTC Bus Stand, Panaji. Goa. ..... Petitioner.

V/s.

1. Village Panchayat of Navelim,
   through its Secretary,
   Navelim, Salcete, Goa

2. The Sarpanch,
   Village Panchayat of Navelim,
   Navelim, Salcete, Goa.

3. Mr. Floriana Barreto,
   Flat No.4, Dolorosa Building,
   Buticas Ward, Buticas,
   Navelim, Goa.

4. Mrs. Clarina Fernandes,
   Shop No.5, Dolorosa Building,
   Buticas Ward, Buticas,
   Navelim, Goa.

5. Mrs. Anita Xavier,
   Flat No.3, Dolorosa Building,
   Buticas Ward, Buticas,
   Navelim, Goa.

6. Mrs. Maria Gonsalves,
   Flat No.2, Dolorosa Building,
   Buticas Ward, Buticas,
   Navelim, Goa.

7. The Senior Town Planner,
   Town & Country Planning Department,
   Margao, Goa. ..... Respondents.

Mr. V.B. Nadkarni, Senior Advocate with Mr. Y.V. Nadkarni, Advocate for the petitioner.

Mr. Guru Shirodkar, Advocate for respondents No.1 and 2.

Respondents No.3 to 6 served absent.

Ms. Winie Coutinho, Government Advocate for respondent No.7.

CORAM : A.P. LAVANDE, J.

DATE : 5th May, 2005.

ORAL JUDGMENT :

Heard Mr. Nadkarni, learned Senior Advocate for the petitioner, Mr. Shirodkar, learned Counsel for respondents No.1 and 2 and Ms. Coutinho, learned Govt. Advocate for respondent No.7. Respondents No.3 to 6 though served, are absent. Rule. Learned Counsel for the respondents waive notice. By consent, heard forthwith.

2. By this petition, the petitioner challenges Judgment and Order dated 30.11.2004, passed by Additional Director of Panchayats, Panaji, dismissing the petition filed by the petitioner herein under Section 178 of the Goa Panchayat Raj Act, 1994 (`the Act', for short), challenging the Orders dated 25.5.2004 and 20.7.2004, issued by respondent No.1-Village Panchayat of Navelim, Salcete, directing the petitioner to dismentle cellular based station erected in the Village at Buticas,

Navelim, Salcete. By the impugned Judgment and Order, the petition filed by the petitioner has been dismissed.

3. According to Mr. Nadkarni, learned Senior Counsel appearing for the petitioner, the Addl. Director of Panchayats while exercising the jurisdiction under Section 178 of the Act could have only made a report and, thereafter, ought to have placed the matter before the Government for further appropriate steps. According to the learned Counsel, on that count itself the impugned Judgment and Order is without jurisdiction. The learned Counsel has placed reliance on the Judgment passed by this Court dated 17.12.2004 in Writ Petition No.181/2004, in which this Court has held that the Director of Panchayats, by exercising jurisdiction under Section 178 of the Act, can only make his report and place the same before the Government for further appropriate steps. According to the learned Counsel, on this count alone the impugned Judgment and Order deserves to be quashed and set aside. I find considerable merit in the submission of the learned Counsel in view of the Judgment dated 17.12.2004, passed in Writ Petition No.181/2004. At this stage Mr. Nadkarni seeks leave of this Court to withdraw the Panchayat Petition No.26/2004 filed under Section 178 of the Act. Mr. Nadkarni states that the petitioner would like to file an application for regularisation of the structure, which is ordered to be demolished by respondent No.1, as permissible under the

Village Panchayat Regulations. Mr. Nadkarni makes a statement that such an application will be filed within a period of one week from today. According to the learned Counsel, it would be just and proper that upon such an application being made by the petitioner, the respondent No.1 is directed to dispose of the said application in terms of the relevant rules. Mr. Shirodkar, learned Counsel appearing for respondents No.1 and 2 states that in case the petitioner chooses to file such an application, respondent No.1 shall decide the same in accordance with the Rules, after following the procedure laid down under the Rules.

4. Considering the facts and circumstances of the case, in my opinion, it would be just and proper to quash and set aside the impugned Judgment and Order dated 30.11.2004 and permit the petitioner to withdraw the Panchayat Petition No.26/2004, filed under Section 178 of the Act. Accordingly, the impugned Judgment and Order dated 30.11.2004 is quashed and set aside and the petitioner is permitted to withdraw Panchayat Petition No.26/2004. In case the petitioner chooses to file an application for regularisation within one week from today, respondent No.1 shall decide the same in accordance with the Rules, after following the procedure laid down by the Rules, by giving opportunity of being heard to respondents No.3 to 6 herein. In the event, the application for regularisation is made by the petitioner, within one week from today, Orders dated 25.5.2004 and 20.7.2004 shall

not be implemented by respondent No.1, until the application of the petitioner for regularisation is finally decided. In the event, such an application is not filed by the petitioner within one week, liberty to respondent No.1 to implement Orders dated 25.5.04 and 20.7.2004.

5. The Writ Petition stands disposed of in the aforesaid terms. Rule made absolute in the above terms. No order as to costs.

A.P. LAVANDE, J.

ssm. `